

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 467 Spousal and Child Support
SPONSOR(S): Health Care Services Policy Committee; Flores; Zapata
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2166

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|---|-----------------|----------------|-----------------------|
| 1) | Civil Justice & Courts Policy Committee | 8 Y, 0 N | Bond | De La Paz |
| 2) | Health Care Services Policy Committee | 7 Y, 0 N, As CS | Preston | Schoolfield |
| 3) | Criminal & Civil Justice Policy Council | 12 Y, 0 N | Bond | Havlicak |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

This bill makes a number of changes to child support, equitable distribution, and alimony laws. Significantly, this bill:

- Requires child support awards to end upon majority and, where appropriate, to account for revised child support guidelines based on remaining children owed support.
- Changes the standard for determining the amount of a child support award in cases where parents have a high income.
- Creates a rebuttable presumption that a person can earn minimum wage, and provides additional criteria for the establishment of an imputed income amount.
- Amends the child support formula to account for income tax consequences of children and their financial support.
- Allows a court to consider a situation where a child support award requires a parent to pay an amount that would lead to the parent falling below the poverty line.
- Reduces the 40% time-sharing threshold for a child support award adjustment based on time-sharing to 20%.
- Where a court provides for a deferred payment of an equitable distribution award, the court must require security and a reasonable rate of interest.
- Provides for the application of a partial payment of alimony similar to how partial payment of child support is applied.

This bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Future Equitable Distribution

An equitable distribution of property is the splitting of property and debts between divorcing spouses. Section 61.075(10), F.S., provides that the court in making an equitable distribution of property may provide that a distribution of money may be made in a lump sum or in installments over time. This bill amends s. 61.075(10), F.S., to provide that, if a court orders a deferred payment, the court must require security and provide a reasonable rate of interest.

Termination of Child Support at Majority

In general, child support ends as the child reaches the age of majority, that is, upon the child reaching 18 years of age. However, s. 743.07(2), F.S., provides that a child support obligation may be extended beyond the 18th birthday in two different circumstances:

- If the child will continue to be dependent upon his or her parents for support beyond his or her 18th birthday because of a physical or mental incapacity that existed prior to the child turning 18.
- If the child is still in high school, performing in good faith and with a reasonable expectation of graduation before the age of 19.

An order establishing child support is a continuing obligation owed by the parent paying support. Many parents paying and receiving child support are surprised to learn that the child support obligation does not automatically end by operation of law. Instead, the parties must obtain a court order modifying the support obligation when a child reaches the age at which support should end. Where one child reaches the age of majority, the parties must return to court and re-litigate child support based on then-current incomes and the number of children remaining to whom child support applies. Obviously, couples often have two or more children of differing ages. One appellate court explained:

It is well established that a trial court may, in its discretion, award lump sum support for two or more children, rather than award a separate amount of support for each child, and that the parent paying such unallocated support "has the duty to petition the court to reduce the amount when one child attains majority." *State v. Segrera*, 661 So.2d 922,

923 (Fla. 3d DCA 1995); *Hammond v. Hammond*, 492 So.2d 837, 838 (Fla. 5th DCA 1986) (confirming that a trial court may award lump sum child support for several children and when it does so, the payor parent must “petition for an order reducing the amount when one child attains majority”). It is equally well settled that because support obligations become the vested rights of the payee and vested obligations of the payor at the time the payments are due, child support payments are not subject to retroactive modification.¹

This bill amends s. 61.13(1)(a), F.S., to provide that child support orders and income deduction orders entered on or after October 1, 2009, must account for the anticipated time at which the child support obligations related to dependent children should terminate. A child support award must change the support obligation at those times to account for the reduced obligation of the one child reaching the age of majority, together with the changed support obligation owed for the remaining child or children, if applicable.

Application of Alimony Payments

Section 61.14(6)(d), F.S., provides that a partial payment of a past due child support obligation is first applied to current child support due, then is applied to delinquent child support due, and then is applied to interest due on the past due payments. There is no corresponding rule regarding how to apply partial payments regarding alimony payments.

This bill amends s. 61.14(6)(d), F.S., to add a parallel rule for application of partial payments of an alimony award. This bill also amends ss. 61.14(6)(d) and 742.08, F.S., to provide that interest due on past due support obligations may be enforced like any other support award, including by contempt, and also provides that interest is not due on the interest.

Child Support Guidelines Formula -- Imputed Income

A court determines support obligations of the parties based on their income. Child support is based primarily on an income-based formula. In some circumstances, the current income of a party does not give an accurate picture of the party's ability and duty to make support payments. Where this occurs, s. 61.30(2)(b), F.S., allows the court to impute income to that party. Imputed income is an estimate of what the party should be earning. The imputed income is then used in determining child support rather than actual income.

This bill amends s. 61.30(2)(b), F.S., related to imputed income. The bill creates a rebuttable presumption that each party can, at a minimum, earn minimum wage on a full-time basis. This presumption can be overcome by proof that the parent has a disability that makes the parent unemployable in part or in whole, that the parent should stay home to care for a child, or that there is some other circumstance other than incarceration that the parent has no control over.

This bill further provides that, for a court to impute income beyond minimum wage, the court must find that the unemployment or underemployment is voluntary and the amount and source of the imputed income, through evidence of income from available employment for which the party is suitably qualified by education, experience, current licensure, or geographic location. Imputed income may not be based on evidence of income over 5 years old. Income may not be imputed at a level that a party has never earned in the past, unless recently degreed, licensed, certified, relicensed, or recertified and thus qualified for. In any determination of imputed income beyond minimum wage, the court must also give due consideration to the parties' time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order.

¹ *State, Dept. of Revenue ex rel. Ortega v. Ortega*, 948 So.2d 855 (Fla.3rdDCA 2007).

This bill also amends s. 409.2563, F.S., regarding administrative establishment of child support, to provide that the minimum imputed income of a parent is the Florida minimum wage. If the parent lives in another state, that state's minimum wage applies. If no other state's minimum wage applies, the federal minimum wage applies.

Child Support Guidelines Formula -- Income Calculation

The child support guidelines formula is a formula that calculates the net income of the parents, determines a minimum child support need, and splits that need by the shared parenting plan to calculate a presumptive child support amount owed by one parent to the other. The court may not award child support that varies from the formula by more than 5% except upon limited circumstances.

This first part of the formula is a determination of each parent's net income by subtracting various expenses from the parent's gross income. The first allowable subtraction from gross income, at s. 61.30(3)(a), F.S., is for income tax liabilities. To properly calculate the subtraction, the court is directed to calculate the appropriate income tax deduction that is expected in the immediate future. The formula does not use current income tax deductions as the case outcome typically affects and changes the income tax liabilities of the parents (if in divorce, they are moving from married to either single or head of household; if in a paternity case, filing status and number of dependents may change).

Income tax laws provide for deductions and tax credits. A deduction reduces the gross income that is used in calculating the income tax, a tax credit is a reduction of taxes owed. Federal income tax law in the past generally prohibited tax credits from creating a negative tax situation where the federal government would owe money back to the taxpayer. That is, these tax credits were nonrefundable, they would generally be lost once a person owed no federal income tax. However, the earned income tax credit, a credit given to the working poor, was refundable under previous tax law. One aspect of the 2009 federal stimulus bill is that several tax credits have moved from nonrefundable to refundable. It is possible that a strict reading of s. 61.30(3)(a), F.S., which simply refers to deductions from income, may not allow the court to account for refundable tax credits when calculating income for child support purposes.

This bill amends s. 61.30(3)(a), F.S., to account for, in the child support formula, personal and dependency exemption, other applicable deductions, the earned income credit, child and dependent care credits, and other allowable tax credits.

Child Support Guidelines Chart

The mid-point of a child support guideline determination is reference to the minimum child support need chart at s. 61.30(6), F.S. The net income of the parents is added together to determine the combined monthly net income amount. The chart has \$50 increments starting at \$650 combined net income. The chart also contains separate columns for between one and six children. If the combined monthly net income is less than the lowest level on the chart, the court is directed to determine child support on a "case-by-case" basis. This bill amends s. 61.30(6), F.S., to eliminate the chart rows for combined monthly income at \$650, \$700, and \$750.

The chart ends at \$10,000 monthly income. Where the combined monthly net income is in excess of \$10,000 a month, the minimum child support need is the \$10,000 a month level plus a percentage of the income above \$10,000. This bill amends s. 61.30(6), F.S., to limit the use of the percentages by providing that the result of the percentage calculation may not be used to determine child support beyond the reasonable needs of the child or children.

Credit for Child Care Expense

One part of the child support calculation is the apportionment of child care expenses between the parents. Under current law, the child care expense is apportioned between the parents based on their percentages of total income. For parents where the time-sharing agreement is between 20% and 80%, the credit for child care expense is 100% of the expense, but in other time-sharing arrangements the parent paying the child care expense has his or her payment reduced by 25% of the child care expense before the payment is used in the formula. This 25% subtraction appears to have been put into law to account for the corresponding federal child care tax credit of 25%; however, higher income parents do not qualify for the full 25% credit rate under current federal tax law (some do not qualify at all) and, because the credit was nonrefundable until this year, lower income parents would not be able to utilize the full 25% credit.

This bill amends ss. 61.30(7) and 61.30(10), F.S., to fully apportion child care expense without deduction to all parents. Note that this bill also changes s. 61.30(3)(a), F.S., to fully account for the effect of tax laws, including the child care tax credit.

Child Support Formula Adjustments

The child support formula is set forth in s. 61.30, F.S. The basic formula is provided in subsections (1) through (10), and changes to that formula are set forth in portions of the analysis above. In short, the formula uses the adjusted incomes of the parents to develop a minimum child support need based on the chart, that is then increased by child care costs and health insurance costs to establish a total child support need. That total need is then multiplied by a parent's percentage share of the joint income to determine that parent's minimum child support obligation. The bill amends s. 61.30(10), F.S., to specify that child support under this base formula is owed by a parent having less than 20 percent of the time-sharing to the other parent.

Section 61.30(11)(a), F.S., provides a list of factors that a court may take into account in adjusting the amount of child support after application of the base formula. Subparagraph (a)9. provides that the court may adjust child support levels when application of the formula requires a person to pay more than 55 percent of his or her gross income for child support in a single child support order. This bill adds that a court may also take into account a situation where application of the child support guidelines (in total) leaves a parent with a net income less than the current federal poverty guidelines.²

Section 61.30(11)(b), F.S., provides a court must adjust the minimum child support need where a parenting plan provides that each child spend a substantial amount of time with each parent. In short, the adjustment of child support requires a recalculation based on the percentage of overnight stays at each parent's home. Subparagraph 8. defines substantial amount of time to be where one parent has 40% or more of the overnights. This bill amends s. 61.30(11)(b)8., F.S., to change the percentage from 40% to 20%.

Child Support Formula -- Effect of the Dependency Exemption

One item that reduces the federal income tax liability of an individual or legally married couple is the dependency deduction. In general, the parent with whom the child resided for more than half of the year is entitled to the deduction unless the court orders that the dependency deduction is to be waived in favor of the other parent. For 2008, a legal dependent reduces the gross income of a taxpayer entitled to the dependency deduction by \$3,500. In addition, a dependent child also entitles the taxpayer to a child tax credit of up to \$1,000. Where the child tax credit provides the same benefit to either parent, the dependency deduction is often a greater benefit to a parent with a higher income as that parent will likely be in a higher income tax bracket.³ Section 61.30(11)(a)8., F.S., provides that the

² Currently, the federal poverty guideline for a single individual is \$10,830 annually (\$902.50 a month). See <http://aspe.hhs.gov/POVERTY/09poverty.shtml>.

court may adjust a child support award to account for the impact of the dependency exemption, and may order a parent to waive the deduction to the benefit of the other if the other is current in child support payments.

In the changes to s. 61.30(3), F.S., this bill changes the formula for child support calculation to provide that a court must take into account the tax effect of the dependency tax deduction. This bill deletes s. 61.30(11)(a)8., F.S., and creates s. 61.30(18), F.S., to provide that a court may order a parent to waive the dependency tax deduction in favor of the other parent, and removes the requirement that the other parent be current in child support before the court may order a parent to waive.

B. SECTION DIRECTORY:

Section 1 amends s. 61.075, Florida Statutes, relating to equitable distribution of marital assets and liabilities.

Section 2 amends s. 61.13, F.S., regarding child support.

Section 3 amends s. 61.14, F.S., regarding enforcement of support.

Section 4 amends s. 61.30, F.S., regarding child support guidelines.

Section 5 amends s. 409.2563, F.S., regarding administrative establishment of child support.

Section 6 amends s. 742.08, F.S., regarding defaults in support payments.

Section 7 provides an effective date of October 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 2 may lessen the number of child support modification cases, lowering legal costs to parents and correspondingly lowering fees earned by lawyers and other professionals.

³ A deduction reduces a taxpayer's gross income. The value of a deduction increases as income rises, as the actual benefit is reduced to the effective income tax rate of the taxpayer. For instance, a person in the 15% tax bracket only receives a \$525 benefit from a single dependency deduction, whereas a person in the 25% tax bracket receives an \$875 benefit.

Any bill amending the child support calculations will affect the payment and receipt of child support awards to many families. The exact impact will differ from family to family. It is expected the change in the definition of "substantial amount of time" from 40% to 20% will greatly increase the number of families in which the child support award is adjusted for time-sharing.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments by the Health Care Services Policy Committee

- Lines 177-219 of the bill propose new language related to the imputation of income for purposes of determining the amount of a child support order. It is not known whether or how the proposed changes on lines 156-198 of the bill will impact Florida families, most particularly those with low incomes. FSU in a recent study under contract to the Legislature, recommended that Florida reduce reliance on imputed income.
- Lines 235-237 of the bill remove the three lowest income levels from the child support guideline chart and it is unclear what effect this will have and it may create additional workload for the court.
- Lines 438-440 The proposed change introduces a new standard for determining child support orders in high income cases without defining the term "reasonable needs". This change could have an effect of limiting the amount of support provided to children from high income parents.
- Lines 491-493 of the bill have raised a concern for the Department of Legal Affairs. They believe this language will be problematic for cases in which the noncustodial parent and custodial parent are earning minimum wage and the department is seeking child support for 2 or more children.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

The Health Care Services Policy Committee adopted two amendments on March 18, 2009, that do the following:

- Reduces the 40% time sharing threshold for a child support award adjustment to 20%; and
- Requires the court to require security and a reasonable rate of interest or otherwise recognize the time value of money if a deferred payment related to equitable distribution.

The analysis reflects the bill as amended.